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MONTHLY BENEFIT News and Developments

Employee Benefits

Directives on Regulations

Separate from the memorandum on the fiduciary rule (see p. 2), the President signed the following that could have implications for benefit plan sponsors and employers:

▪ *Executive Order on Enforcing the Regulatory Reform Agenda*, requiring all agencies to evaluate existing regulations and identify those for repeal or modification;

▪ *Executive Order on Reducing Regulation and Controlling Regulatory Costs*, requiring that for every new regulation, two existing ones be identified for elimination and that the incremental cost for all new final regulations in FY2017 be no greater than zero; and

▪ *Executive Order on Core Principles for Regulating the U.S. Financial System*, directing the Treasury Secretary to report on the extent that existing laws, guidance, or policies promote the White House's "core principles," which include empowering "Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth."

Upcoming Key Dates

4/30/17 – Revised deadline for sponsors of individually designed defined contribution plans to convert the plans into preapproved plans and apply for a determination letter.

6/15/17 (fiscal years beginning after) – Application of GASB Statement 75 by governments, requiring reporting of retiree healthcare liabilities on balance sheets.

7/31/17 (for plan years ending on/after 10/1/16 and on/before 10/1/17) – Fifth reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

Legislative Activity on the Benefits Front

In his first address to Congress, the President outlined his policy priorities, calling for, among other things, the lifting of the Budget Control Act's cap that limits current spending on defense programs, tax reform, $1 trillion in infrastructure investment, paid family leave for workers, and repealing and replacing the Affordable Care Act (ACA). The President is expected to send his budget request to Congress in March for the fiscal year 2018 that will begin in October, along with a supplemental spending request for defense and law enforcement/security programs, that could be considered alongside the 11 appropriations bills Congress is working on to fund the remainder of the current fiscal year; federal agencies are operating under a continuing resolution that is set to expire on Apr. 28. The President did not present details on how to pay for his initiatives and suggested that economic growth resulting from enactment of his policies would raise sufficient revenues.

In his speech, the President provided only a broad outline for an ACA replacement. expressed his dissatisfaction with the ACA's individual mandate and called for: access to coverage for individuals with preexisting conditions; a stable transition for those enrolled in coverage through the exchanges; tax credits and health savings accounts to help Americans purchase the coverage they choose; resources and flexibility for state governors to address coverage under Medicaid; legal reforms; efforts to drive down the high prices of drugs; and health insurance availability across state lines.

Congressional Response

The President's plans are expected to meet resistance from members of Congress in both parties. Regarding the budget, defense and nondefense discretionary programs have been subject to across-the-board cuts, although Congress in the past has overridden the separate caps relatively equally. To allow for a $54 billion increase in defense spending while slashing other federal program spending – such as for the Department of Labor – by a corresponding amount in FY2018, Congress will have to enact a law to override the Budget Control Act's "sequestration" caps. Democrats have strongly opposed cuts to nondefense programs, especially if defense program spending is increased, and Republicans are not unified on the federal budget issues: some have pushed for cuts to entitlement programs, others are seeking even more funds for defense, and still others oppose reductions to selected agencies (such as the State Department). Similarly, a FY2017 supplemental spending bill or appropriations bills for the remainder of the fiscal year without revenue offsets (to pay for the President's other high-priority items) could face criticisms, if not opposition, from the Republican deficit hawks. The President's call for $1 trillion in new infrastructure spending also might present similar challenges.

Republicans also are split on the ACA. The more conservative members are pushing for a straight and immediate repeal, arguing against ideas such as refundable tax credits as another "entitlement" that carries significant costs. Although many in the GOP appear willing to provide states flexibility through block grants for Medicaid, concerns have been raised about how the amounts would be determined given that some states opted for the ACA's expanded Medicaid program and thus have received more funds than the states

Accounting Developments

▪ The Financial Accounting Standards Board released *Accounting Standards Update No. 2017-06, Plan Accounting: Defined Benefit Pension Plans (Topic 960), Defined Contribution Pension Plans (Topic 962), Health and Welfare Benefit Plans (Topic 965): Employee Benefit Plan Master Trust Reporting* (a consensus of the Emerging Issues Task Force). The new standards require plans to provide additional disclosures effective for fiscal years beginning after Dec. 15, 2018.

▪ The Governmental Accounting Standards Board published *GASB Statement No. 84, Fiduciary Activities*, providing guidance to state and local governments on what constitutes fiduciary activities for financial reporting purposes, how fiduciary activities should be reported, and when liabilities to beneficiaries should be recognized.

Employer-Sponsored Health Trends and Medicaid

The Agency for Healthcare Research and Quality released *Statistical Brief #499: Trends in Enrollment, Offers, Eligibility and Take-Up for Employer-Sponsored Insurance: Private Sector, by State Medicaid Expansion Status, 2008-2015*, which looks at healthcare coverage trends across states that did and did not expand Medicaid. The report found that private-sector enrollment rates fell in both groups of states, but the decline was greater in Medicaid expansion states (7.1 versus 4.5 percentage points). Contributing to the decline were employer-sponsored insurance eligibility and take-up rates.

HDHPs and CDHPs

The National Center for Health Statistics released *Health Insurance Coverage: Early Release of Estimates from the National Health Interview Survey, January-September 2016*, providing estimates of coverage, including under private high-deductible health plans with and without a health savings account, in 38 states. The percentage enrolled in an HDHP increased from 36.7% in 2015 to 39.1% in the first nine months of 2016.

CRS on FMLA

The Congressional Research Service released *Family and Medical Leave Act (FMLA): Proposed Legislation in the 114th Congress*, providing an overview of the Family Medical Leave Act, its legislative history, and proposals to amend the law in the 114th Congress.

that did not expand Medicaid. With lawmakers hearing from ACA-supporting constituents, many Republicans have been reluctant to embrace any proposed replacement.

The House GOP leadership has been working on a replacement that is expected to be formally released in March. An early draft bill – dated Feb. 10 – included most of the ideas covered in a "Policy Brief" announced earlier by Speaker Paul Ryan (R-WI). The draft, which is undergoing revisions and must be scored by the Congressional Budget Office before being formally introduced, calls for a limit on the amount excludable from income for employer-sponsored health insurance. The amount would be capped at the 90th percentile of current premiums, thereby subjecting to taxes excess amounts. The draft legislation also would repeal all of the ACA taxes (including the "Cadillac tax" on "high-cost" coverage), along with the individual and employer mandates.

In other employment-based areas, the draft proposal includes modifications to health savings accounts (e.g., increase the amounts that may be contributed) and to health flexible spending accounts (e.g., allowing for over-the-counter medical expenses without a prescription). Instead of the current ACA subsidies to help low- or moderate-income households afford insurance, the draft proposal provides age-adjusted tax credits, without regard to income, for individuals without employer-sponsored coverage. The tax credits could be used to pay for unsubsidized COBRA continuing healthcare coverage. To encourage individuals to continue their health insurance, the proposal would impose a penalty of 30% of the premiums – to be paid for one year – if they have a coverage gap and decide to reenroll. For insurance pricing, the proposal would allow premiums for older individuals to be five times as much as younger individuals, a departure from the ACA's 3:1 ratio.

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Regulatory Roundup

From the White House:

- *Presidential Memorandum on Fiduciary Duty Rule*, which calls on the Department of Labor to prepare an updated economic and legal analysis of the agency's conflict-of-interest/fiduciary rule for brokers offering retirement advice.

From the Department of Treasury/IRS:

- *Revenue Ruling 2017-05*, containing the 2017 plan year covered compensation tables.
- *Notice 2017-20*, extending the period for an employer to furnish an initial written notice to eligible employees about a qualified small employer health reimbursement arrangement.
- A *memorandum* for agency examiners on 401(k) plan safe-harbor hardship distributions.
- *Winter 2017 Statistics of Income Bulletin*, providing statistics on determination letters issued to employee benefit plans.
- *Publication 15-a - Employer's Supplemental Tax Guide for Use in 2017*, employment tax information supplementing the basic information provided in Publication 15.

From the Department of Labor:

- *Information letter* on applying ERISA's fiduciary provisions to default investments with lifetime income features that contain certain liquidity and transferability restrictions.

From the Department of Health and Human Services:

- *Proposed rule* to revise the ACA's small-group insurance standards on network adequacy, essential community providers for qualified health plans, and actuarial value.
- *Final rule* adjusting the civil penalty amounts under the Department's jurisdiction.
- A *Bulletin* extending the transitional period for nongrandfathered individual and small group plans to become compliant with the ACA's insurance market reforms.